

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB DEC. 2, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Innotek Pet Products, Inc.

Serial No. 75/211,532

Jerry E. Hyland and Michael S. Gzybowski of Barnes &
Thornburg for applicant.

Richard Y. Kim, Trademark Examining Attorney, Law Office 102
(Thomas V. Shaw, Managing Attorney).

Before Quinn, Chapman and McLeod, Administrative Trademark
Judges.

Opinion by McLeod, Administrative Trademark Judge:

An intent-to-use application has been filed by Innotek
Pet Products, Inc. to register COW TEMP for "temperature
sensing devices for bovines, namely, electronic temperature
sensors and data transmitters."¹

The Trademark Examining Attorney has refused
registration under Section 2(e)(1) of the Act, 15 U.S.C. §

¹ Application Serial No. 75/211,532, filed December 11,
1996, under Section 1(b) of the Trademark Act, 15 U.S.C. §
1051(b).

1052(e)(1), on the ground that applicant's designation, when applied to applicant's goods, is merely descriptive.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs. An oral hearing was not requested.

Applicant argues that the mark is suggestive, and that it does not immediately convey a significant function, attribute or purpose of applicant's products to the relevant public. According to applicant, the word "cow" refers not only to female cattle, but also to other animals such as whales, elephants or moose. Similarly, applicant submits that the term "temp" is a widely used abbreviation with several different meanings. Applicant concludes that the combination of the two words -- COW TEMP -- creates a unitary mark which serves to identify and distinguish applicant's goods from those of others. Applicant also maintains, among other things, that neither competitors nor the articles cited by the Examining Attorney use COW TEMP in a descriptive manner.

The Examining Attorney, for his part, argues that the applied-for mark is merely descriptive of applicant's goods. In particular, the Examining Attorney contends the mark immediately conveys to consumers that applicant's devices

measure or sense bovine (or cow) temperature. According to the Examining Attorney, the evidence of record shows that "cow temperature," the abbreviation of which is "cow temp," is frequently used in a descriptive manner to refer to devices similar to those of applicant. The Examining Attorney asserts, among other things, that the combined designation "cow temp" creates no incongruity, and no imagination is required to understand that applicant's "temperature sensing devices for bovines" measure cow temperature. In support of the refusal to register, the Examining Attorney submitted dictionary definitions and evidence from the NEXIS database.

A term is merely descriptive of goods, within the meaning of Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), if it immediately describes a quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods. *In re Quik-Print Copy Shops, Inc.*, 616 F.2d 523, 205 USPQ 505 (CCPA 1980), *citing In re Abcor Development Corp.*, 588 F.2d 811, 813-14, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant

attribute about them. *In re Gyulay*, 820 F.2d 1216, 1218, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987). Furthermore, whether a term is merely descriptive is determined not in the abstract but in relation to the goods for which registration is sought. *Abcor Development*, 588 F.2d at 814, 200 USPQ at 218; *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

After careful review of the record, we agree with the Examining Attorney that the term COW TEMP, when used in connection with the identified goods, immediately describes a significant purpose of applicant's product, namely that the temperature sensing devices for bovines measure or sense cow temperature.

As noted by the Examining Attorney, the term "cow" is defined as "a domesticated bovine of either sex or any age." *Webster's Third New International Dictionary* 525 (1971). The term "temp" is defined as an abbreviation for "temperature." *Acronyms, Initialisms & Abbreviations Dictionary* 2552 (1995).

The NEXIS evidence submitted by the Examining Attorney during prosecution also demonstrates that the combined term "cow temperature" is regularly used to describe products similar to, if not the same as, applicant's products. For example, the NEXIS evidence shows the following uses:

"With Lefcourt's system, a **cow's temperature** also can be monitored 'to detect when a cow is in heat, or estrous, and is ready to be bred.'" Amal Kumar Kaj, *Odds and Ends*, Wall St. J., December 28, 1992 at B1. (emphasis added).

"By having a thermometer, you could have checked your **cows temperature** [sic] when she first refused to eat the grain. After determining fever, you could have called your vet and started early antibiotic treatment." Jan J. Mettler, Jr., *Keeping Pastures Safe; Preventing Livestock Diseases*, Mother Earth News, April, 1992, at 43. (emphasis added).

"For five days after calving **cows' temperatures** are taken once a day. When temperatures are more than 1C (33.8F) above normal, cows are treated." Jessica Buss, *Management Keeps Disease to Minimum*, Farmers Weekly, August 8, 1997, at 40. (emphasis added).

We reject applicant's contention that the combined designation "cow temp" creates a unique, suggestive mark. There is nothing unique or incongruous about the combination. See *In re National Shooting Sports Foundation*, 219 USPQ 1018 (TTAB 1983) and cases cited therein. On the contrary, the dictionary definitions and NEXIS evidence establish that "cow temp" is merely a shortened form of the common phrase "cow temperature," and that the relevant consumers would certainly understand this plain meaning when the designation is used with applicant's bovine temperature sensing devices.

In this regard, the present situation differs from the cases relied upon by applicant in which admittedly descriptive terms, when combined, were found to result in a composite which was not merely descriptive. See *In re Colgate-Palmolive Co.*, 406 F.2d 1385, 160 USPQ 733 (CCPA 1969); *In re Kopy Kat, Inc.*, 498 F.2d 1379, 182 USPQ 372 (CCPA 1974); *In re Capital Cities Communications, Inc.*, 193 USPQ 111 (TTAB 1976); *In re Tennis in the Round, Inc.*, 199 USPQ 496 (TTAB 1978). We believe that this case falls in a line of cases where two descriptive terms, when combined, remain merely descriptive. See e.g. *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1112 (Fed. Cir. 1987)(term "SCREENWIPE" formed from combination of words "SCREEN" and "WIPE" held unregistrable for a "pre-moistened, anti-static cloth for cleaning computer and television screens"); *Quik-Print, supra* (QUIK-PRINT held merely descriptive for printing and photocopying services); *In re Orleans Wines, Ltd.*, 196 USPQ 516 (TTAB 1977)(BREADSPRED merely descriptive of jellies and jams).

Furthermore, the fact that the individual terms may encompass other meanings is not persuasive of a different result. See *In re Acuson*, 225 USPQ 790 (TTAB 1985). We are not persuaded that, when "cow temp" is viewed in the context

of applicant's temperature sensing devices for bovines, consumers would consider these other possible meanings.

Also, the fact that neither competitors nor the media utilize the exact terminology "cow temp" in reference to temperature devices does not mean that the term is suggestive, rather than merely descriptive of applicant's goods. As the Examining Attorney correctly observed, the fact that applicant may intend to be the first or only user of the composite designation does not justify registration. See *In re Eden Foods Inc.*, 24 USPQ2d 1757, 1761 (TTAB 1992), citing *National Shooting Sports, supra*.

Decision: The refusal to register is affirmed.

T. J. Quinn

B. A. Chapman

L. K. McLeod
Administrative Trademark
Judges, Trademark
Trial and Appeal Board

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